

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission
System Operators, Inc.

Docket No. ER03-1345-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
TECHNICAL CONFERENCE

(Issued November 14, 2003)

1. In this order, the Commission will accept for filing the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revision to Attachment C of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume 1 (OATT) relating to the calculation of Available Flowgate Capacity (AFC) and suspend it for up to five months to become effective the earlier of five months from the date of this order, or the date the Commission specifies in an order issued after the technical conference established below, subject to refund. The Commission's acceptance of the proposed revision is also subject to further orders of the Commission that will follow the technical conference. This order provides the parties an opportunity to further explore the issues raised by the Midwest ISO's filing so that the Commission's ultimate resolution of these issues is properly informed. This action benefits customers of Midwest ISO by facilitating clear application of the Midwest ISO OATT.

Background

2. In its February 28, 2003 filing in Docket No. ER03-573-000, the Midwest ISO proposed, among other things, to revise Attachment C of Midwest ISO's OATT as it related to the calculation of AFC for transmission requests that source and/or sink within the footprint of American Transmission Company, LLC (ATCLLC).¹ The proposal

¹ Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,191 (2003) (May 16 Order).

required all ATCLLC Control Areas² to be treated as a single zone for the AFC calculation for non-firm service. The Midwest ISO explained that, pursuant to Wisconsin law,³ ATCLLC received approval from the Wisconsin Public Service Commission (Wisconsin Commission) to provide transmission service and calculate AFC on a system-wide basis. As a result, the Midwest ISO stated that ATCLLC and its customers believe that, for AFC calculations for non-firm service that sources or sinks within the ATCLLC footprint, such non-firm service is to be treated by the Midwest ISO as if the ATCLLC Control Areas were a single Control Area.

3. Moreover, the Midwest ISO maintained that the proposed revisions would affect only non-firm transmission service requests that involve one of the ATCLLC Control Areas, at which point the granularity⁴ of the entire ATCLLC footprint would be applied. The Midwest ISO also maintained that, due to the fact that this level of granularity looks at the entire ATCLLC footprint, a non-firm transmission service request that both sources and sinks within the ATCLLC footprint would not require a flow-based review (AFC calculation) and would consequently receive automatic approval.⁵ The Midwest ISO further explained that for other services, all of the individual ATCLLC Control Areas would remain valid source and sink areas within the Midwest ISO footprint. Therefore, when a transmission service request for firm transmission service that involves one of the ATCLLC Control Areas is submitted to the OASIS, the Midwest ISO would continue to use the granularity of the individual control area in evaluating whether sufficient AFC exists to approve the firm transmission service request.

² ATCLLC is comprised of five control areas that are certified by the North American Electric Reliability Council (NERC): Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, Madison Gas & Electric Company, and Alliant East (Wisconsin Power & Light Company).

³ The Midwest ISO cites Wisconsin Statute 196.485(3m)(a)1.d, which the Midwest ISO states requires that the transmission company apply for membership in the Midwest ISO as a single zone for pricing purposes, and Wisconsin Statute 196.485(3m)(a)1.f, which the Midwest ISO states requires that the transmission company elect to be included in a single zone for the purposes of any tariff administered by the Midwest ISO.

⁴ The Midwest ISO, at Original Sheet No. 253B, defines “granularity” as “the size of the entity used to process requests in a flow-based analysis.”

⁵ The Midwest ISO notes that this level of granularity for non-firm transmission service requests involving ATCLLC Control Areas would apply only for the limited time between the instant filing date and the implementation of the Midwest ISO’s Day-2 congestion management program.

4. In the May 16 Order, the Commission stated:

The Midwest ISO's proposal to automatically approve non-firm transmission transactions that source and sink within ATCLLC's footprint, without a flow-based analysis, raises many questions, identified by the Protestors, which have not been adequately addressed by the Midwest ISO's filing. Moreover, this proposed treatment of non-firm transmission service requests that source and sink with the ATCLLC 's footprint appears to contradict the Midwest ISO's OATT. The OATT requires that all transmission requests that source in a control area within the Midwest ISO and sink in another control area within the Midwest ISO, or in a control area external to the Midwest ISO (or vice versa), are, prior to approval, scrutinized pursuant to a flow-based analysis. Additionally, it is not clear what effect this exemption will have on other non-firm transmission requests or whether other non-firm transmission transactions will become more prone to [Transmission Loading Relief] TLR procedures.⁶

The Commission rejected Midwest ISO's proposal without prejudice to the Midwest ISO refiling it with appropriate support.

Proposed Revision to Attachment C

5. In the instant filing, the Midwest ISO again seeks acceptance of the revisions rejected in the May 16 Order. However, this time the Midwest ISO attempts to provide a detailed response to the concerns raised by the Commission and intervenors in the May 16 Order.

6. Midwest ISO contends that contrary to the assertions of some intervenors, Midwest ISO stakeholders had ample opportunities to review, comments and revision the proposed amendments to the OATT.⁷ Midwest ISO states that the proposed procedure was first discussed and approved by the MAIN ATC Subcommittee as early as April 2001, with several Midwest ISO stakeholders participating even before the Midwest ISO became operational. Midwest ISO lists other meeting between January 30, 2003 and February, 2003, at which time, it contends, its stakeholders had to opportunity to raise their concerns and questions.⁸

⁶ May 16 Order at P 23.

⁷ Application at 5-6.

⁸ Id. at 6.

7. Midwest ISO also argues that while Excel Energy Service, Inc. (Xcel) expressed concerns that approval of non-firm transactions within ATCLLC would give preferential treatment to such transaction, non-firm transmission service requests that source and sink within ATCLLC would be given the same treatment as any other transmission service requester.⁹ The service request would be approved on a first-come, first-served basis, if available, unless a TLR event precludes such approval.¹⁰

8. Midwest ISO acknowledged that the Commission and some intervenors were concerned regarding the possible effect the proposed procedure would have on their non-firm users. According to Midwest ISO, treating the ATCLLC footprint as a single zone electrically is no different from treating other load-serving areas contiguous to the ATC footprint as a single zone.¹¹

9. The Commission expressed concerns that it was unclear whether or not the proposed procedure would cause more TLR restrictions for other non-firm users. Cinergy feared that the revisions to the OATT would cause a reduction on the level of granularity for analyzing transaction that sink in ATCLLC, and potentially affect other non-firm transactions or curtailing such transaction during a TLR event. Midwest ISO contends, however, that pursuant to the proposed revisions, all non-firm transactions sourcing and sinking within ATCLLC would share the same non-firm transmission capacity from any given direction.¹² Midwest ISO states that available non-firm services on all ATCLLC Control-Area-to-Control-Area paths in the aggregate will be decremented on a 1:1 basis to ensure that the total available capacity is not oversold.¹³ Midwest ISO elaborates such measures, as well as NERC IDC and TLR function in its usual manner under the OATT, will ensure that no non-firm user will be curtailed on a discriminatory basis.¹⁴ In addition, Midwest ISO argues that the proposed procedure is identical to combining several “scheduling areas” or “subcontrol areas” into a single zone for purposes of fairness and efficiency, and though not formally consolidating control

⁹ Id. at 6.

¹⁰ Id.

¹¹ Id.

¹² Id. at 7.

¹³ Id.

¹⁴ Id.

areas, this revisions effectively combines them for purposes of calculating and administering non-firm import capability.¹⁵

10. The Commission and Xcel expressed concerns that the proposed procedure appear to contradict the Midwest ISO OATT for flow-based analyses for certain transaction. Midwest ISO contends that the Commission has encouraged the Midwest ISO to consider streamlining its multiple control area figurations,¹⁶ and that treating ATCLLC as a single control area is a step in that direction. In addition, Midwest ISO contends, this revision is consistent with NERC procedures.¹⁷

Notice of Filing, Interventions and Protests

11. Notice of Midwest ISO's filing was published in the Federal Register, 68 Fed. Reg. 56,283 (2003), with comments, protests, and interventions due on or before October 6, 2003. Consumers Energy Company (Consumers Energy) and Wisconsin Electric Power Company (Wisconsin Electric) filed timely motions to intervene without substantive comments. MidAmerican Energy Company (MidAmerican) filed a timely motion to intervene and protest. Wisconsin Public Service Corporation and Upper Peninsula Power Company (together, WPSC) filed an out-of-time motion to intervene, without substantive comments. On October 10, 2003, Madison Gas and Electric (MGE) filed a motion to intervene out-of-time and comments in support of Midwest ISO's proposed tariff revisions. On October 10, 2003, Exelon Corporation (Exelon) filed a motion to intervene out-of-time and protest. On October 23, 2003, the Public Service Commission of Wisconsin (Wisconsin Commission) filed a motion to intervene out-of-time and comments in support of the complaint.

12. Acknowledging the concerns of Wisconsin Electric and WPSC regarding the administration of the proposed procedure, Midwest ISO contends that it has included more details, which it has taken from the previous ATC protocols, describing how this procedure worked while in effect from January 2001 to February 2002.

13. Midwest ISO contends that contrary to Xcel's allegations that the proposed procedure alters the status of the Wisconsin control areas, and hence reduces their

¹⁵ Id.

¹⁶ Id. at 8, citing Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,196 (2003).

¹⁷ Id.

incentive to consolidate, the proposed single-zone procedure speeds up consolidation of the control areas within ATCLLC and facilitates the eventual accomplishment of this goal.¹⁸

14. In response to some intervenors arguing that the Wisconsin statutes from which the proposed procedure is derived are inconsistent with the FPA, Midwest ISO contends that the proposed procedure is consistent with the Commission's goals of creating a more uniform, integrated regional grid, for the purpose of enhancing wholesale generation competition.¹⁹ The Wisconsin statutes, Midwest ISO argues, is in line with these goals.²⁰

15. MGE urges the Commission to accept the Midwest ISO's proposal as, it contends, the Midwest ISO has addressed and fully supported the Commission's concerns in the May 16 Order, and has shown that the proposed treatment of all of the ATCLLC Control Areas as a single zone for purposes of calculating non-firm "ATC" does not contradict the Midwest ISO OATT provision for a flow-based analysis for transactions between Control Areas.²¹ MGE further contends that the Midwest ISO has shown that the proposed single zone would not negatively impact other non-firm transmission requests, nor cause more TLR restrictions for other non-firm users.²²

16. Wisconsin Commission contends that Midwest ISO's proposal is not only consistent with the Commission's policy of improving wholesale grid generation, but is also appropriate for Wisconsin's transmission divestiture and ATCLLC's membership in the Midwest ISO.²³

17. MidAmerican contends that the current proposal is essentially identical to the proposal that the Midwest ISO filed and the Commission rejected in the May 16 Order.²⁴ MidAmerican explains that, in general, Midwest ISO evaluates AFC for each

¹⁸ Id. at 9.

¹⁹ Id.

²⁰ Id.

²¹ MGE comments at 2.

²² Id. at 2-3.

²³ Wisconsin Commission comments at 3-4.

²⁴ MidAmerican protest at 3, 4, 5, 8.

combination of source control areas and sink control areas, and that, as discussed in the Midwest ISO OATT, a greater level of detail or granularity provides a more accurate signal of loading on constrained facilities.²⁵ MidAmerican contends that despite the advantages of increased granularity, the Midwest ISO's proposal to calculate AFC on a control area-to-control area basis uses a reduced level of granularity when calculating AFC for non-firm transactions involving the ATCLLC footprint.²⁶ MidAmerican argues that while Midwest ISO's February 28 Filing and the instant September 15 Filing propose to eliminate the current practice of calculating AFC for each ATCLLC control area and would instead treat the entire ATCLLC footprint as a single unit when calculating AFC for non-firm transactions, neither filing provides any support for the proposed change.²⁷ MidAmerican also argues that Midwest ISO's contention that the Wisconsin Commission and the Available Transmission Capacity Subcommittee of MAIN previously approved similar proposals is not dispositive, as neither organization can force the Commission to act in Midwest ISO's favor.²⁸

18. Midwest ISO cites Wisconsin law in support of the proposal.²⁹ MidAmerican, however, contends that the Wisconsin statute merely refers to unified control and operation of the ATCLLC system and does not require ATCLLC to be treated as a single entity for AFC calculation.³⁰ Further, MidAmerican argues, the statute does not require the reduction of the granularity of AFC calculations, and even if were interpreted as such, it would apply to all transactions, not only to the non-firm transactions at issue in the instant filing. According to MidAmerican, the Commission should at a minimum require a compliance filing to delete redundant language.³¹

²⁵ Id. at 3.

²⁶ Id. at 4.

²⁷ Id.

²⁸ Id. at 5-6.

²⁹ Application at 2 (Midwest ISO cites to Wisconsin statutes for various provisions of Reliability 2000, namely, Section 196.485(1)(g), Wis. Stats. (2002); Section 196.485(3m)(a)1.d, Wis. Stats (2002); and Section 196.485(3m)(a)1.f., Wis. Stats. (2002)).

³⁰ MidAmerican protest at 5.

³¹ Id.

19. MidAmerican also argues that the proposal is discriminatory toward parties outside ATCLLC. It submits that although all non-firm transactions within ATCLLC would be treated equally and all non-firm transactions outside ATCLLC would be treated equally, non-firm transactions within ATCLLC would not be treated equally with non-firm transactions outside ATCLLC. In particular, non-firm transactions outside ATCLLC would be subjected to AFC analysis, while those within ATCLLC would not. MidAmerican further argues that the proposal, as presented, does nothing to consolidate the Midwest ISO control areas, and therefore the Commission should reject the proposal again.³²

20. Exelon argues that it does not object to the Wisconsin utilities connected to the ATCLLC system sharing “ATC,” provided that the impacts on the transmission system are correctly evaluated by the Midwest ISO.³³ Exelon also argues that the Commission should again reject the proposal because the method of calculating “ATC,” as proffered, is discriminatory, as it appears to benefit Wisconsin at the expense of reliability.³⁴ Further, Exelon contends, the combination of five separate and distinct control areas into a “virtual ATCLLC area” is unsupported operationally and policy-wise.³⁵ Exelon elaborates that this proposal, if accepted, would treat transactions that tend to cause congestion the same as those that would tend to relieve congestion.³⁶ Further, Exelon contends, the proposal would result in additional congestion and Transmission Loading Relief (TLR) procedures on the Wisconsin system. In addition, Exelon states that it is not clear how TLRs would be evaluated.³⁷ Exelon further fears that the Joint Operating Agreement between Midwest ISO and PJM, as well as market-to-non-market congestion management procedures, may be adversely impacted by the proposal.

³² Id. at 7-8.

³³ Exelon protest at 6.

³⁴ Id. at 3.

³⁵ Id. at 4.

³⁶ Id. at 5.

³⁷ Id. at 5-6.

Discussion

A. Procedural Matters

21. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant WSPC's, MGE's, Exelon's and Wisconsin Commission's untimely, unopposed motions to intervene.

B. Commission Conclusion

22. Our preliminary analysis of the Midwest ISO's filing indicates that it has not been shown to be just and reasonable; and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the Midwest ISO's proposed revision to Attachment C of Midwest ISO OATT for filing, suspend it for up to five months, to become effective the earlier of five months from the date of this order or the date the Commission specifies in an order issued after the technical conference that is established below.³⁸ As we noted in West Texas Utilities Co.,³⁹ even when looking at cases that do not present the possibility of substantially excessive rates, "in cases in which ... other extraordinary factors indicate that wholesale customers may suffer irreparable harm absent a five-month suspension, we shall order a maximum suspension."

23. The Commission shares many of the concerns that parties have expressed regarding the Midwest ISO's filing. At this point, we believe that these issues would benefit from further exploration by the advisory Staff and the parties. Therefore, we will direct the Staff to convene a technical conference. Each party must be prepared at this conference to address the issues raised by protests and comments and to fully support its position on each issue. A technical conference is an off-the-record conference at which the parties and the Staff can explore the issues raised by the filing, gain an understanding of the facts, and obtain additional information regarding the positions of the parties in order to facilitate resolution. Following the conference, the parties will have an opportunity to file written comments that will be included in the formal record of the proceeding, which, together with the record developed to date, will form the basis for further Commission action.

³⁸ The Midwest ISO must continue its current business practices pending our further review of this filing during the five-month suspension.

³⁹ 18 FERC ¶ 61,189 at 61,375 (1982).

The Commission orders:

(A) The Midwest ISO's proposed revision to Attachment C to its OATT is hereby accepted for filing and suspended for up to five months to become effective the earlier of five months from the date of issuance of this order, or the date the Commission specifies in an order issued after the technical conference established in this order, subject to refund.

(B) The Commission Staff is hereby directed to convene a technical conference to explore the issues raised by the Midwest ISO's revision to Attachment C in Docket No. ER03-1345-000, and to report the results of the conference to the Commission within 120 days of the date of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.